

Citation  
343 S.E.2d 551

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(Cite as: 81 N.C.App. 140, 343 S.E.2d 551)

Elyse C. SCHMOYER, General Guardian and natural mother of Robert Wesley Harmon, Jr., minor child of Robert Wesley Harmon, Sr., Deceased, Plaintiff-Employee,

v.

CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, Employer, Defendant-Employer,  
United States Fidelity & Guaranty Insurance Company, Defendant-Insurance  
Carrier.

No. 8510IC1390.

Court of Appeals of North Carolina.

June 3, 1986.

Mother of accident victim filed workers' compensation claim against his employer and their insurer. The Industrial Commission denied claim and mother appealed. The Court of Appeals, Wells, J., held that employee was not on "special errand" for employer at time of death.

Affirmed.

Schmoyer v. Church of Jesus Christ of Latter Day Saints

[1]

413 WORKERS' COMPENSATION

413XVI Proceedings to Secure Compensation

413XVI(P) Hearing or Trial

413XVI(P)3 Questions of Law and Fact

413k1718 Arising Out of and in the Course of Employment

413k1719 k. In general.

N.C.App., 1986.

Whether injury serving as basis for workers' compensation claim "arose out of" and "in the course of" worker's employment is mixed question of law and fact.

Schmoyer v. Church of Jesus Christ of Latter Day Saints

[2]

413 WORKERS' COMPENSATION

413VIII Injuries for Which Compensation May Be Had

413VIII(C) Injuries Arising Out of and in Course of Employment in General

413k605 k. Construction and application of statutory provisions in general.

N.C.App., 1986.

Requirements that injury "arise out of" worker's employment and occur "in the course of" employment are separate and distinct and must both be satisfied in order to render injury compensable under workers' compensation statute. G.S. § 97-1 et seq.

Schmoyer v. Church of Jesus Christ of Latter Day Saints

[3]

413 WORKERS' COMPENSATION

413VIII Injuries for Which Compensation May Be Had

413VIII(C) Injuries Arising Out of and in Course of Employment in General

413k607 Arising Out of Employment in General

413k610 k. What injuries arise out of employment in general.

N.C.App., 1986.

Term "arising out of" in workers' compensation statute refers to origin of injury or causal connection of injury to employment, and term "in the course of" refers to time, place, and circumstances under which injury occurred. G.S. § 97-1 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

343 S.E.2d 551

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(Cite as: 81 N.C.App. 140, 343 S.E.2d 551)

Schmoyer v. Church of Jesus Christ of Latter Day Saints

[3]

## 413 WORKERS' COMPENSATION

413VIII Injuries for Which Compensation May Be Had

413VIII(C) Injuries Arising Out of and in Course of Employment in General

413k614 In Course of Employment in General

413k617 k. What are injuries in course of employment in general.

N.C.App., 1986.

Term "arising out of" in workers' compensation statute refers to origin of injury or causal connection of injury to employment, and term "in the course of" refers to time, place, and circumstances under which injury occurred. G.S. § 97-1 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

Schmoyer v. Church of Jesus Christ of Latter Day Saints

[4]

## 413 WORKERS' COMPENSATION

413VIII Injuries for Which Compensation May Be Had

413VIII(D) Particular Causes, Circumstances, and Conditions of Injury

413VIII(D)17 Place of Injury with Reference to Plant or Premises of Employer

413k718 k. On errand by specific request or direction of employer or to transact specific business.

N.C.App., 1986.

"Special errand" exception to general rule that injuries to worker traveling to and from place of employment are not compensable provides that injury during travel related to special duty for employer is "in the course of" employment.

See publication Words and Phrases for other judicial constructions and definitions.

Schmoyer v. Church of Jesus Christ of Latter Day Saints

[5]

## 413 WORKERS' COMPENSATION

413XVI Proceedings to Secure Compensation

413XVI(N) Weight and Sufficiency of Evidence

413XVI(N)7 Accident or Injury and Consequences Thereof

413k1487 k. Injuries arising out of and in course of employment in general.

N.C.App., 1986.

Evidence that worker had planned to spend the night before work at place of employment because of predicted snow storm and was killed in accident at place on usual route to work did not establish that worker was on "special errand" when he met his death and therefore entitled to compensation from employer.

See publication Words and Phrases for other judicial constructions and definitions.

**\*\*552 \*141** Robert Wesley Harmon was killed in an automobile accident in Greensboro in the late evening of 5 February 1984. This claim for benefits under the Workers' Compensation Act was brought by plaintiff as the natural guardian of Robert Wesley Harmon, Jr., the only child of Robert W. Harmon.

On 5 February 1984, Robert Harmon was employed as a custodian at the Church of Jesus Christ of Latter Day Saints located on Pinetop Road in Greensboro. Harmon worked for hourly wages, his usual hours of employment being from 8:00 a.m. until 4:00 p.m. One of Harmon's duties was to open the church in the morning. On the day he was killed, Harmon worked at the church until about 5:00 p.m., then went to visit his fiancée, Ms. Cynthia Howle, at her residence about three miles from the church. Harmon left Ms. Howle's residence at about 11:00 p.m., intending to spend the night with his parents who lived in Pleasant Garden, a town located between Climax and Greensboro. After Harmon arrived at his parents' home, he received a telephone call from Ms. Howle who told him that she was distraught and upset. Harmon offered to return to her home and console her, saying that afterwards he would probably go to the church and spend the night. While en route to Ms. Howle's residence, Harmon was involved in the accident which caused his death. Other facts will be discussed as necessary in the body of our opinion.

Following a hearing, Deputy Commissioner Rush denied plaintiff's claim for benefits. Upon appeal, the Full Commission adopted and affirmed Commissioner

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EXHIBIT B -25

800

189 FEDERAL REPORTER, 2d SERIES

CHURCH OF JESUS CHRIST OF LATTER  
DAY SAINTS V. SCARBOROUGH.

No. 4187.

United States Court of Appeals  
Tenth Circuit.

May 10, 1951.

Rehearing Denied June 5, 1951.

Action by Spencer B. Scarborough, administrator of the estate of Eliza J. Holt, against the Church of Jesus Christ of Latter Day Saints to recover sum on deposit with church. The United States District Court for the District of Utah, Willis W. Ritter, J., entered judgment for plaintiff, and defendant appealed. The Court of Appeals, Pickett, Circuit Judge, held that agreement between parties was binding contract even though it included testamentary verbiage and words indicating a gift and even though passing of title to deposit was postponed until death.

Judgment reversed and cause remanded, with directions.

Gifts 5(1)

Will 92

Where owner of \$7,000 deposit with church made agreement whereby church was to pay interest on fund during life of owner with fund to become property of church upon death of owner, even though agreement contained testamentary verbiage and terms indicating a gift but was invalid as either testamentary disposition or gift, instrument was binding as contract.

Leon Sarpy, New Orleans, La. (Ray, Quinney & Nebeker, and Albert R. Bowen, all of Salt Lake City, Utah, and Chaffe, McCall, Toler & Phillips, New Orleans, La., on the brief), for appellant.

James William Jones, Jr., Natchitoches, La., for appellee.

Before BRATTON, HUXMAN, and PICKETT, Circuit Judges.

PICKETT, Circuit Judge.

The plaintiff, as administrator of the estate of Eliza J. Holt, brought this action against the Church of Jesus Christ of Latter Day Saints, hereinafter referred to as the Church, to recover \$7000 which was

on deposit with the Church pursuant to the terms of an instrument executed by the parties on August 9, 1929. This appeal is from a judgment in favor of the plaintiff.

On about April 1, 1926, Charles E. Holt deposited with the Church in the State of Utah the sum of \$7000. Holt died in 1929 and his widow, Eliza J. Holt, a resident of Louisiana, became the owner of the \$7000 and made claim to the same. A representative of the Church went to Louisiana to discuss the matter with Mrs. Holt and her attorney, and the above mentioned instrument resulted. It provided that the funds should remain on deposit with the Church under the conditions set forth in that instrument, with the ownership remaining in Mrs. Holt. The amount was to bear interest at the rate of 5% per annum payable semi-annually on the 1st day of April and the 1st day of October of each year throughout the life of Mrs. Holt. The Church also agreed to pay 4% per annum from April 1, 1926, to October 1, 1929. It further provided: "It being especially understood and agreed herein, that any neglect or default in the payment of any maturing interest, as herein stated, then at the option of the said Mrs. Holt, this agreement to be abrogated and annulled, and the entire amount of principal of Seven Thousand Dollars to be returned to the said Mrs. Holt, immediately and all accrued interest." The instrument concluded with this language: "And it is agreed that on payment of the interest as herein stipulated, the said principal shall become the property of the said Church of Jesus Christ of Latter Day Saints and under onerous donation, at the time of the death of the donor, Mrs. Eliza J. Holt." There were phrases in the instrument appearing to be of a testamentary character or which indicated that a gift may have been intended.

The parties agree that the provisions of the instrument do not amount to a testamentary disposition or a gift under the laws of Louisiana. We have then to consider only the question of whether the instrument was a binding contract between the parties whereby the deposit became the property of the Church upon the death of

EXHIBIT B-26

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ROB RINDE f/k/a ROBERT LARRY LEROY  
PITSOR, JR.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS, a Utah corporation  
sole, aka the "MORMON CHURCH" THE  
CHURCH OF JESUS CHRIST OF LATTER-  
DAY SAINTS, an unincorporated association,

Defendant.

NO. C06-0556 TSZ

STIPULATION AND ORDER

Plaintiff's Motion to Amend Complaint to Clarify Status of Defendants and Motion to Remand is currently pending before the Court. The matter has been fully briefed and is noted for May 26, 2006. The parties are exploring a possible resolution of the issue before the Court and request that consideration of the motion be postponed until June 12, 2006.

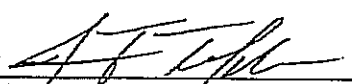
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No. C06-0556 TSZ

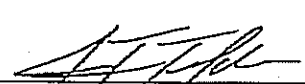
GORDON MURRAY TILDEN LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154  
Phone (206) 467-6477  
Fax (206) 467-6292

1 DATED this 1<sup>st</sup> day of June, 2006.

2  
3 GORDON MURRAY TILDEN LLP

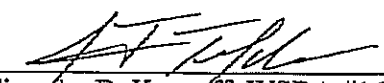
GORDON, THOMAS, HONEYWELL,  
MALANCA, PETERSON & DAHEIM LLP

6  
7 By   
8 Charles C. Gordon, WSBA #1773  
9 Jeffrey I. Tilden, WSBA #12219  
10 Attorneys for Defendant

By   
Michael T. Pfau, WSBA #24649  
11 *Sent* Attorneys for Plaintiff

*per email authentication*

12 LAW OFFICES OF TIMOTHY D.  
13 KOSNOFF

14  
15 By   
16 Timothy D. Kosnoff, WSBA #16586  
17 Attorneys for Plaintiff

18 *Sent* *per email auth.*

20 ORDER

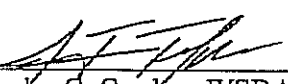
21  
22 IT IS SO ORDERED.

23  
24 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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29 THE HONORABLE THOMAS S. ZILLY

30  
31  
32 Presented by:

33  
34 GORDON MURRAY TILDEN LLP

35  
36  
37 By   
38 Charles C. Gordon, WSBA #1773  
39 Jeffrey I. Tilden, WSBA #12219  
40 Attorneys for Defendant

1 Approved as to form:  
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3 GORDON, THOMAS, HONEYWELL,  
4 MALANCA, PETERSON & DAHEIM LLP  
5

6  
7 By 

8 ~~C~~ Michael T. Pfau, WSBA #24649

9 Attorneys for Plaintiff

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12 LAW OFFICES OF TIMOTHY D. KOSNOFF  
13

14  
15 By 

16 ~~C~~ Timothy D. Kosnoff, WSBA #16586

17 Attorneys for Plaintiff

*per email auth.*

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STIPULATION AND ORDER - 3  
No. C06-0556 TSZ

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Fax (206) 467-6292

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Michael T. Pfau  
Michelle A. Menely  
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Co-Counsel for Plaintiff Rob Rinde

Timothy D. Kosnoff  
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/s/  
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05-CV-00556-OBJ

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ROB RINDE t/k/a ROBERT LARRY LEROY  
PITSOR, JR.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS, a Utah corporation  
sole, aka the "MORMON CHURCH" THE  
CHURCH OF JESUS CHRIST OF LATTER-  
DAY SAINTS, an unincorporated association,

Defendant.

NO. C06-0556 TSZ

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request that consideration of the motion be postponed until June 12, 2006.

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No. C06-0556 TSZ

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Exhibit Page 268



DATED this 1<sup>st</sup> day of June, 2006.

GORDON MURRAY TILDEN LLP

GORDON, THOMAS, HONEYWELL,  
MALANCA, PETERSON & DAHEIM LLP

By [Signature]  
Charles C. Gordon, WSBA #1773  
Jeffrey I. Tilden, WSBA #12219  
Attorneys for Defendant

By [Signature]  
Michael T. Pfaff, WSBA #24649  
Attorneys for Plaintiff

*per email authentication*

LAW OFFICES OF TIMOTHY D.  
KOSNOFF

By [Signature]  
Timothy D. Kosnoff, WSBA #16586  
Attorneys for Plaintiff

*for per email auth.*

ORDER

IT IS SO ORDERED.

DATED this 2<sup>nd</sup> day of June, 2006.

[Signature]  
THE HONORABLE THOMAS S. ZILLY

Presented by:

GORDON MURRAY TILDEN LLP

By [Signature]  
Charles C. Gordon, WSBA #1773  
Jeffrey I. Tilden, WSBA #12219  
Attorneys for Defendant

1 Approved as to form:  
2

3 GORDON, THOMAS, HONEYWELL,  
4 MALANCA, PETERSON & DAHEIM LLP  
5

6  
7 By 

8 C. Michael T. Pfau, WSBA #24649

9 Attorneys for Plaintiff

*per email auth.*

10  
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12 LAW OFFICES OF TIMOTHY D. KOSNOFF  
13

14  
15 By 

16 C. Timothy D. Kosnoff, WSBA #16586

17 Attorneys for Plaintiff

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STIPULATION AND ORDER - 3  
No. C06-0556 TSZ

Exhibit      Page 210

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 2, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Michelle A. Menely  
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Co-Counsel for Plaintiff Rob Rinde

/s/  
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STIPULATION AND ORDER - 4  
No. C06-0556 TSZ

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GORDON, THOMAS, HONEYWELL  
MALANCA, PETERSON & DAHEIM LLP

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROB RINDE f/k/a ROBERT LARRY LEROY  
PITSOR, JR.

Plaintiff,

vs.

THE CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS, a Utah corporation  
sole, aka the "MORMON CHURCH" THE  
CHURCH OF JESUS CHRIST OF LATTER-  
DAY SAINTS, an unincorporated association,

Defendant.

NO. 2:06-CV-00556TSZ

ACCEPTANCE OF SERVICE ON  
BEHALF OF DEFENDANT THE  
CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS

I, Jeffrey I. Tilden of GORDON MURRAY TILDEN, LLP attorneys for defendant  
CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS hereby accept service of the Summons and Complaint on behalf of  
said defendant, as though personal service on the defendant had occurred.

ACCEPTANCE OF SERVICE (COP) - 1 of 2  
(2:06-CV-00556TSZ)  
[164447 v01.doc]

LAW OFFICES  
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1 DATED this 1<sup>st</sup> day of June, 2006.

2  
3 GORDON MURRAY TILDEN

4 By 

5 Jeffrey I. Tilden, WSBA No. 12219

6 Attorneys for Defendant Corporation of the  
7 President of the Church Of Jesus Christ of  
8 Latter-Day Saints  
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ACCEPTANCE OF SERVICE (COP) - 2 of 2  
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The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ROB RINDE f/k/a ROBERT LARRY LEROY  
PITSOR, JR.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST OF  
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sole, aka the "MORMON CHURCH" THE  
CHURCH OF JESUS CHRIST OF LATTER-  
DAY SAINTS, an unincorporated association,

Defendant.

NO. C06-0556 TSZ

ANSWER TO PLAINTIFF'S  
COMPLAINT

JURY DEMAND

I. ANSWER

The Corporation of the President of The Church of Jesus Christ of Latter-day Saints  
("Defendant"), by and through its attorneys, responds to Plaintiff's Complaint as follows:

1. Answering the General Allegations of Plaintiff's Complaint, Defendant denies the  
same.

2. Answering paragraph 2.1 of Plaintiff's Complaint, Defendant admits that Larry  
Pitsor at one time was believed to have resided in Bellevue, Washington, where it is believed his

ANSWER TO PLAINTIFF'S COMPLAINT - 1  
No. C06-0556 TSZ

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1 mother and siblings also resided. Defendant is without present knowledge or information  
2  
3 sufficient to form a belief as to the truth or falsity of Plaintiff's remaining allegations and,  
4  
5 therefore, denies the same.  
6

7         3. Answering paragraph 2.2 of Plaintiff's Complaint, Defendant admits that The  
8  
9 Corporation of the President of The Church of Jesus Christ of Latter-day Saints is a Utah  
10  
11 corporation sole which is registered and operates, in the State of Washington. Except as  
12  
13 expressly admitted herein, any other allegations contained in said paragraph are denied.  
14

15         4. Answering paragraph 3.1 of Plaintiff's Complaint, Defendant is without present  
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17 knowledge or information sufficient to form a belief as to the truth or falsity of Plaintiff's  
18  
19 allegations and, therefore, denies the same.  
20

21         5. Answering paragraph 4.1 of Plaintiff's Complaint, Defendant admits that one of  
22  
23 the ecclesiastical offices of The Church of Jesus Christ of Latter-day Saints ("LDS Church") is  
24  
25 that of President and Prophet, and that said person possesses and exercises the authority  
26  
27 commensurate with that office as defined by the doctrines and beliefs of the LDS Church.  
28  
29 Defendant admits that the current President of the LDS Church is Gordon B. Hinckley.  
30  
31 Defendant admits that the Corporation of the President of The Church of Jesus Christ of Latter-  
32  
33 day Saints is registered and operates in the State of Washington. Except as expressly admitted  
34  
35 herein, any other allegations contained in said paragraph are denied.  
36

37         6. Answering paragraph 4.2 of Plaintiff's Complaint, Defendant admits that male  
38  
39 members of the LDS Church may be eligible for ordination to the lay priesthood of the church  
40  
41 beginning at age 12; admit there are different offices in the priesthood with different  
42  
43 responsibilities, and that eligible members of the church must meet the standards of worthiness,  
44  
45 as that term is doctrinally defined by the church, before being ordained into an office of the



1 priesthood. Defendants further admit that the offices of Elder and High Priest (in the  
2 Melchizedek Priesthood), are offices in the lay priesthood of the LDS Church. Except as  
3 expressly admitted herein, any other allegations contained in said paragraph are denied.  
4  
5

6  
7 7. Answering paragraph 4.3 of Plaintiff's Complaint, Defendant denies the same.  
8

9 8. Answering paragraph 4.4 of Plaintiff's Complaint, Defendant admits that the LDS  
10 Church is and has been for an extended period of time one of many sponsoring organizations of  
11 the Boy Scouts of America. Except as expressly admitted herein, any other allegation contained  
12 in said paragraph is denied.  
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17 9. Answering paragraph 4.5 of Plaintiff's Complaint, Defendant denies the same.  
18

19 10. Answering paragraphs 4.6, 4.7, 4.8 and 4.9 of Plaintiff's Complaint, Defendant is  
20 without present knowledge or information sufficient to form a belief as to the truth or falsity of  
21 Plaintiff's allegations and, therefore, denies the same. The allegation that Lewis was a "Mormon  
22 Priest" is expressly denied.  
23  
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27 11. Answering paragraphs 4.10, 4.11, 4.12, 4.13 and 4.14 of Plaintiff's Complaint,  
28 Defendant denies the same.  
29

30  
31 12. Answering paragraph 5.1 of Plaintiff's Complaint, Defendant incorporates herein  
32 by reference its responses to Plaintiff's previous allegations, as though fully set forth herein.  
33  
34

35 13. Answering paragraphs 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9 and 5.10 of Plaintiff's  
36 Complaint, Defendant denies the same.  
37  
38

39 14. Answering paragraph 6.1 of Plaintiff's Complaint, Defendant incorporates herein  
40 by reference its responses to Plaintiff's previous allegations, as though fully set forth herein.  
41  
42

43 15. Answering paragraphs 6.2, 6.3, 6.4, 6.5, 6.6 and 6.7 of Plaintiff's Complaint,  
44 Defendant denies the same.  
45

1           16.     Answering paragraph 7.1 of Plaintiff's Complaint, Defendant incorporates herein  
2  
3 by reference its responses to Plaintiff's previous allegations, as though fully set forth herein.  
4

5           17.     Answering paragraph 7.2 of Plaintiff's Complaint, Defendant denies the same.  
6

7           18.     Answering paragraph 8.1 of Plaintiff's Complaint, Defendant incorporates herein  
8  
9 by reference its responses to Plaintiff's previous allegations, as though fully set forth herein.  
10

11          19.     Answering paragraph 8.2 of Plaintiff's Complaint, Defendant denies the same.  
12

## 13                               II. AFFIRMATIVE DEFENSES

14  
15 For further answer, and by way of affirmative defense, defendant alleges as follows:  
16

17          1.     Failure to State a Claim. Plaintiff's Complaint fails, in whole or in part, to state  
18  
19 a claim upon which relief can be granted.  
20

21          2.     No Fiduciary Duty. Defendant owes no fiduciary duty to Plaintiff.  
22

23          3.     Failure to Mitigate Damages. Plaintiff has failed to mitigate or minimize his  
24  
25 damages, if any.  
26

27          4.     No Proximate Cause. Plaintiff's damages, if any, were proximately caused by  
28  
29 the acts or omissions of others over whom Defendant had no control or right of control.  
30

31          5.     Contribution. If liability is established, Defendant is entitled to contribution  
32  
33 from any party or non-party whose negligence may have contributed as a proximate cause to the  
34  
35 injury complained of in Plaintiff's Complaint.  
36

37          6.     Contributory Fault / Apportionment. Pursuant to RCW 4.22.070(1), damages  
38  
39 are to be apportioned according to the relative fault of all at-fault entities. In accordance with  
40  
41 CR 12(i), Defendant identifies Lewis as an unnamed at-fault party who Defendant claims,  
42  
43 pursuant to RCW 4.22.070(1), as being at fault. Defendant reserve the right to identify other  
44  
45

unnamed or as yet unidentified at-fault entities, if any, once such identity has become known to Defendant.

7. **Statute of Limitations.** Plaintiffs' claims are barred by the statute of limitations.

8. **No Liability for Intentional Misconduct.** Defendant is not liable under the laws of the State of Washington for any damages caused by the intentional misconduct of third parties, and the damages, if any, caused by said third parties must be segregated.

9. **No Vicarious Liability.** Vicarious liability cannot be imposed upon Defendant for any acts or omissions of any other person which are not within the course and scope of their duties as agents for Defendant.

10. **Failure to Join an Indispensible Party.** The Complaint fails to join Lewis, a person needed for just adjudication of the claims set forth in the Complaint, as required by Rule 19 of the Federal Rules of Civil Procedure.

11. **Waiver, Estoppel and Laches.** Plaintiff's claims are barred by the equitable doctrines of waiver, estoppel and laches.

12. **General Denial.** Defendant denies any allegation of Plaintiff's Complaint not addressed by the foregoing responses.

### III. MATTERS OF AVOIDANCE

1. **Freedom of Religion.** To the extent that plaintiffs' claims are based upon these defendants' exercise of their religious beliefs, they are barred by the defendants' rights under the First Amendment to the United States Constitution, and by Article I, Section II, of the Constitution of the State of Washington.

IV. RESERVATION

Defendants hereby reserve the right to assert such further and other affirmative defenses, avoidance, and to otherwise allege, admit, or deny as may be warranted by discovery.

V. PRAYER FOR RELIEF

WHEREFORE, defendants pray for judgment as follows:

1. Dismissal. Plaintiff takes nothing by way of his Complaint against Defendant and that the Complaint be dismissed with prejudice;
2. Attorneys Fees and Costs. Defendant be granted its attorneys' fees and costs against plaintiff;
3. Liability. That, pursuant to RCW 4.22.070, if liability were to be established against Defendant, that Defendant be severally liable only for its share of fault, if any (pursuant to RCW 4.22.015); and
4. Other Relief. That Defendant be given such other and further relief as the Court deems just and equitable.

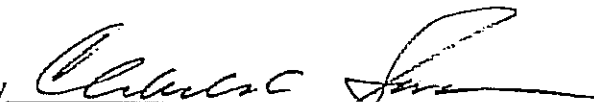
VI. JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), defendant The Corporation of the President of the Church of Jesus Christ of Latter-Day Saints respectfully demands a trial by jury.

DATED this 20<sup>th</sup> day of June, 2006.

GORDON MURRAY TILDEN LLP

By



Charles C. Gordon, WSBA #1773

Jeffrey I. Tilden, WSBA #12219

Attorneys for Defendant The Corporation of the  
President of the Church of Jesus Christ of  
Latter-Day Saints

ANSWER TO PLAINTIFF'S COMPLAINT - 6  
No. C06-0556 TSZ

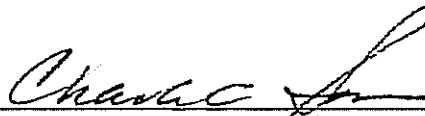
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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ROB RINDE f/k/a ROBERT LARRY LEROY  
PITSOR, JR.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS, a Utah corporation  
sole, aka the "MORMON CHURCH" THE  
CHURCH OF JESUS CHRIST OF LATTER-  
DAY SAINTS, an unincorporated association,

Defendant.

NO. C06-0556 TSZ

STIPULATION RE: EXTENDING  
DATES FOR INITIAL  
DISCLOSURES AND JOINT  
STATUS REPORT

The parties, through their respective counsel of record, request the Court to enter the below-joined order extending the dates for filing Initial Disclosures and a Combined Joint Status Report from July 3, 2006, to August 7, 2006. The parties have conferred regarding this and believe the extension is consistent with counsel's schedules and other matters pending in this case.

STIPULATION RE: EXTENDING DATES FOR INITIAL  
DISCLOSURES AND JOINT STATUS REPORT - I  
No. C06-0556 TSZ

GORDON MURRAY TILDEN LLP  
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Phone (206) 467-6477  
Fax (206) 467-6292

1 DATED this 26<sup>th</sup> day of June, 2006.

2  
3  
4 GORDON MURRAY TILDEN LLP

GORDON, THOMAS, HONEYWELL,  
MALANCA, PETERSON & DAHEIM LLP

5  
6  
7  
8 By 

9 Charles C. Gordon, WSBA #1773  
10 Jeffrey I. Tilden, WSBA #12219  
11 Attorneys for Defendant  
12

By  *By consent of Plaintiff*

Michael T. Pfau, WSBA #24649  
Attorneys for Plaintiff

13  
14 LAW OFFICES OF TIMOTHY D.  
15 KOSNOFF

16  
17  
18 By  *By consent of Plaintiff*

19 Timothy D. Kosnoff, WSBA #16586  
20 Attorneys for Plaintiff  
21

22  
23  
24 ORDER

25  
26 Based upon the above stipulation and the Court being duly advised,

27  
28 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the date for serving  
29  
30 Initial Disclosures and Combined Joint Status Report and Discovery Plan is hereby continued  
31  
32 from July 3, 2006, to August 7, 2006.  
33

34 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

35  
36  
37  
38  
39 \_\_\_\_\_  
40 The Honorable Thomas S. Zilly  
41 United States District Court Judge  
42  
43  
44  
45

STIPULATION RE: EXTENDING DATES FOR INITIAL  
DISCLOSURES AND JOINT STATUS REPORT - 2  
No. C06-0556 TSZ

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1 Presented by:  
2

3 GORDON MURRAY TILDEN LLP  
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5  
6 By 

7 Charles C. Gordon, WSBA #1773

8 Jeffrey I. Tilden, WSBA #12219

9 Attorneys for Defendant  
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12 GORDON, THOMAS, HONEYWELL,  
13 MALANCA, PETERSON & DAHEIM LLP  
14

15  
16 By  

17 Michael T. Pfau, WSBA #24649

18 Attorneys for Plaintiff  
19  
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21 LAW OFFICES OF TIMOTHY D. KOSNOFF  
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23  
24 By  

25 Timothy D. Kosnoff, WSBA #16586

26 Attorneys for Plaintiff  
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STIPULATION RE: EXTENDING DATES FOR INITIAL  
DISCLOSURES AND JOINT STATUS REPORT - 3  
No. C06-0556 TSZ

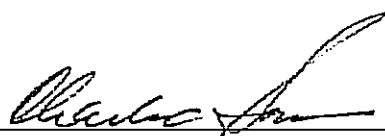
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STIPULATION RE: EXTENDING DATES FOR INITIAL  
DISCLOSURES AND JOINT STATUS REPORT - 4  
No. C06-0556 TSZ

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROB RINDE f/k/a ROBERT LARRY  
LEROY PITSOR, JR.,

Plaintiff,

v.

THE CORPORATION OF THE  
PRESIDENT OF THE CHURCH OF JESUS  
CHRIST OF LATTER-DAY SAINTS, a Utah  
corporation sole, aka the "MORMON  
CHURCH" THE CHURCH OF JESUS  
CHRIST OF LATTER-DAY SAINTS, an  
unincorporated association,

Defendant.

No. C06-556Z

ORDER

This matter comes before the Court on Plaintiff's Motion to Amend Complaint to Clarify Status of Defendants and Motion to Remand, docket no. 5. The Court being fully advised now GRANTS the motions as set forth in this Order:

**Plaintiff's Motion to Amend Complaint to Clarify Status of Defendants**

Plaintiff, Rob Rinde, failed to plead the existence of two defendants in his Complaint. See Compl., docket 3. The Court therefore construes Plaintiff's Motion to Amend Complaint to Clarify Status of Defendants as a motion to join the "'Mormon Church' The Church of Jesus Christ of Latter-Day Saints" (hereinafter referred to as the "Mormon Church") as a defendant.

MINUTE ORDER 1-

1 The Mormon Church is an unincorporated association with members in all fifty states.  
2 Rytting Decl., docket 7, ¶ 5; Def.'s Opp'n, docket 6, at 2. It is well-established that the  
3 citizenship of unincorporated associations is the citizenship of each of the individual  
4 members of the association. Johnson v. Columbia Props. Anchorage, 437 F.3d 894, 899 (9th  
5 Cir. 2006). Thus, the Mormon Church is a non-diverse defendant.

6 "[T]he proper standard for deciding whether to allow post-removal joinder of a  
7 diversity-destroying defendant is set forth in 28 U.S.C. § 1447(e)." Boon v. Allstate Ins.  
8 Co., 229 F. Supp. 2d 1016, 1020 n.2 (C.D. Cal. 2002). Section 1447(e) provides: "If after  
9 removal the plaintiff seeks to join additional defendants whose joinder would destroy subject  
10 matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to  
11 the State court." 28 U.S.C. § 1447(e). Joinder of a diversity-destroying defendant pursuant  
12 to Section 1447(e) is left to the discretion of the district court. Newcombe v. Adolf Coors  
13 Co., 157 F.3d 686, 691 (9th Cir. 1998).

14 Having considered the six factors described in Boon, 229 F. Supp. 2d at 1019-20, the  
15 Court concludes that permitting joinder under Section 1447(e) is appropriate in the present  
16 case. Permitting joinder of the Mormon Church would facilitate a just adjudication of the  
17 matter. Conversely, disallowing joinder would hinder Mr. Rinde from asserting his rights  
18 against an entity allegedly involved in the breach of duties and related causes of action. See  
19 IBC Aviation Servs., Inc. v. Compania Mexicana de Aviacion, 125 F. Supp. 2d 1008, 1012  
20 (N.D. Cal. 2000). The absence of the Mormon Church as a named defendant could preclude  
21 Mr. Rinde from recovering damages for any fault attributable to the Mormon Church. See  
22 Kottler v. Wetherington, 136 Wn.2d 437, 445-47 (1998). In contrast, "[t]here will be little  
23 prejudice to Defendant[] from allowing amendment and remand at such an early stage in the  
24 case." Palestini v. Gen. Dynamics Corp., 193 F.R.D. 654, 657 (S.D. Cal. 2000). Although  
25 Defendant Corporation of the President of the Church of Jesus Christ of Latter-Day Saints  
26 ("COP") argues that Mr. Rinde's sole purpose for seeking joinder is to destroy diversity

1 jurisdiction, the Court “declines to impute an improper motive to Plaintiff simply because  
2 Plaintiff seeks to add a non-diverse defendant post-removal.” IBC Aviation Servs., 125 F.  
3 Supp. 2d at 1012.

4 COP also contends that the Mormon Church is not a proper party because once a  
5 religious entity has chosen to incorporate, only the corporate form may be sued. The cases  
6 cited by COP, however, merely support the general rule that religious controversies are not  
7 the proper subject of civil court inquiry. See, e.g., Islamic Ctr. of Harrison, Inc. v. Islamic  
8 Science Found., Inc., 628 N.Y.S. 2d 179, 179 (App. Div. 1995). Although the Free Exercise  
9 Clause of the United States Constitution “restricts the government’s ability to intrude into  
10 ecclesiastical matters or to interfere with a church’s governance of its own affairs,” Bollard  
11 v. California Province of the Soc’y of Jesus, 196 F.3d 940, 945 (9th Cir. 1999), a religious  
12 association does not operate wholly free from civil law. “The First Amendment does not  
13 provide churches with absolute immunity to engage in tortious conduct. So long as liability  
14 is predicated on secular conduct and does not involve the interpretation of church doctrine or  
15 religious beliefs, it does not offend constitutional principles.” C.J.C. v. Corp. of Catholic  
16 Bishop of Yakima, 138 Wn.2d 699, 728 (1999) (citing Sanders v. Casa View Baptist Church,  
17 134 F.3d 311, 366 (5th Cir. 1998)).

18 For the foregoing reasons, the Court GRANTS Plaintiff’s Motion to Amend  
19 Complaint to Clarify Status of Defendants, docket no. 5. The Clerk is directed to file the  
20 Proposed Amended Complaint, attached as Exhibit A to the Kosnoff Decl., docket no. 5.

21 **Plaintiff’s Motion to Remand**

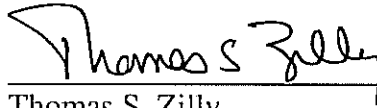
22 Diversity jurisdiction requires complete diversity of citizenship between the parties to  
23 an action. 28 U.S.C. § 1332(a); Cardon v. Arkoma Assocs., 494 U.S. 185, 187 (1990). Once  
24 a non-diverse defendant is joined, remand becomes mandatory: “[a] district court may not  
25 allow joinder of a non-diverse party and retain jurisdiction.” Stevens v. Brink’s Home  
26 Security, Inc., 378 F.3d 944, 949 (9th Cir. 2004); see also 28 U.S.C. § 1447(e). Because the

1 Court is granting Plaintiff's motion to join the Mormon Church as a non-diverse defendant,  
2 remand is mandatory. Accordingly, the Court GRANTS the Plaintiff's Motion to Remand,  
3 docket no. 5.

4 The Clerk is directed to remand the case to King County Superior Court, Case No. 06-  
5 2-09825-1SEA, in accordance with this Order.

6 IT IS SO ORDERED.

7 Filed and entered this 30th day of June, 2006.

8  
9 

10 Thomas S. Zilly  
11 United States District Judge  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROB RINDE f/k/a ROBERT LARRY LEROY  
PITSOR, JR.

Plaintiff,

vs.

THE CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS, a Utah corporation  
sole; and the "MORMON CHURCH" THE  
CHURCH OF JESUS CHRIST OF LATTER-  
DAY SAINTS, an unincorporated association,

Defendants.

NO. 2:06-CV-00556TSZ

AMENDED COMPLAINT

I. GENERAL ALLEGATIONS

This case alleges child sexual abuse, sexual assault and sexual battery, intentional infliction of emotional distress (aka the Tort of "Outrage"), civil conspiracy, fraudulent concealment and gross negligence. It arises out of the brutal victimization of plaintiff when he was twelve years old by PAUL H. LEWIS, a Mormon Church Scoutmaster and

AMENDED COMPLAINT - 1 of 10  
(2:06-CV-00556TSZ)  
[Amended Complaint.doc]

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1 Melchisedek priest. LEWIS sodomized plaintiff, beat and choked him and forced a wire coat  
 2 hanger up his penis inflicting permanent injury to his urogenital system that resulted in  
 3 excruciating physical and emotional pain that persists to this day. When he was  
 4 approximately fourteen years old Plaintiff disclosed the abuse to civil authorities. Three  
 5 church officials, including one who was a Seattle attorney, a Bellevue ward bishop and  
 6 another local church leader knowing that plaintiff's accusations were true pressured plaintiff  
 7 into not cooperating with law enforcement officials who were investigating LEWIS. These  
 8 church officials acted as part of a coordinated effort to shield fellow priest LEWIS from the  
 9 law and to protect the Mormon Church from scandal and civil liability.

## 10 II. PARTIES

11 2.1 Plaintiff ROB RINDE, (known as Larry Pitsor at relevant times), is an adult  
 12 and at all times relevant hereto was a boy residing with his mother and siblings first in Seattle,  
 13 and then in Bellevue, Washington. Plaintiff was born December 8, 1969. ROB RINDE, his  
 14 mother and his four siblings were recruited into the Church of Jesus Christ of Latter-day  
 15 Saints (hereinafter the "Mormon Church").

16 2.2 Defendant THE CORPORATION OF THE PRESIDENT OF THE CHURCH  
 17 OF JESUS CHRIST LATTER-DAY SAINTS, a Utah corporation sole, is a corporation duly  
 18 organized and operating pursuant to the laws of Utah. This defendant also operates as the  
 19 "MORMON CHURCH" THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS,  
 20 which is an unincorporated association. This defendant will hereinafter be referred to as  
 21 COP. COP operates churches within the State of Washington.

22 2.3 Defendant the "MORMON CHURCH" THE CHURCH OF JESUS CHRIST  
 23 OF LATTER-DAY SAINTS, is an unincorporated association. This defendant will  
 24 hereinafter be referred to as the "Mormon Church." The Mormon Church operates churches  
 25 within the State of Washington.  
 26

AMENDED COMPLAINT - 2 of 10  
 (2:06-CV-00556TSZ)  
 [Amended Complaint.doc]

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### III. JURISDICTION AND VENUE

3.1 Jurisdiction and venue are proper in this Court because the acts giving rise to this claim occurred in Bellevue, King County, Washington.

### IV. FACTS

4.1 "COP" is a corporation governed by a single individual, the President of the Mormon Church, Gordon B. Hinckley. The President wields ultimate and absolute authority within the Mormon Church. Mr. Hinckley, is the "Divine Prophet, Seer and Revelator" of the Church and has the authority to appoint and remove anyone in the Mormon Church, including all members of wards and stakes, at will. The President of the Mormon Church controls everything in the Mormon Church and all of its wards and stakes. As such, the President of the Church has authority to dictate changes in Church policy, discipline, ecclesiastical doctrine or anything else he so chooses. The acts of the President, in his capacity as head of the Mormon Church, are the acts of COP. COP is registered to do business within, and conducts continuous and systematic activities within, the State of Washington. At all relevant times, plaintiff was a member of and attended a Seattle and/or a Bellevue ward of the Mormon Church.

4.2 Adult male members of the Church are eligible to be ordained as "Priests." There are various levels of priesthood, including elevation to the rank of "Elder," "Melchisedek Priest," "High Priest." Elders, Melchisedek Priests and High Priests are held out by the Mormon Church as men that are "morally worthy" and deserving of the trust of its members.

4.3 At all relevant times, COP and the Mormon Church assumed special responsibilities toward its members including a disciplinary and red-flagging system meant to identify and track sexual predators and other dangerous individuals within the membership in order to protect innocent members from harm they might inflict.

AMENDED COMPLAINT - 3 of 10  
(2:06-CV-00556TSZ)  
[Amended Complaint.doc]

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1           4.4    The Mormon Church itself <sup>is</sup> ~~are~~ closely affiliated with the Boy Scouts of  
2 America. The Mormon Church is the oldest and one of the largest sponsoring organizations  
3 of boy scouting in the United States. Since 1913 the Mormon Church has used the Scouting  
4 program as an integral part of its ministry to boys and young men. Scouting is the exclusive  
5 youth activity for males in the Mormon Church.

6           4.5    During the relevant time period, COP and the Mormon Church adopted  
7 guidelines for handling victims of child sexual abuse and sex offenders. They failed to follow  
8 their guidelines with respect to LEWIS.

9           4.6    During the approximate time period of 1981-1983, when RINDE was around  
10 twelve years old, LEWIS was RINDE's ward scoutmaster. At that time LEWIS was in the  
11 United States Navy and was a transient with no ties or history to the area prior to the church  
12 placing LEWIS in the position of Scoutmaster of a Seattle ward to which RINDE was a  
13 member.

14          4.7    Using his position of authority as Scoutmaster and Mormon Priest, LEWIS  
15 was able to gain access to RINDE and use that access to groom and then molest, rape and  
16 sadistically torture him.

17          4.8    LEWIS sexually molested RINDE at various locations in the Seattle area  
18 including at an apartment to which LEWIS had unrestricted access, in the swimming pool,  
19 locker room/shower and steam bath at Sand Point Naval Air Station, and in a motel room in  
20 Issaquah.

21          4.9    The most appalling acts of abuse occurred in a room at Motel 6 in Issaquah in  
22 approximately 1983. LEWIS used physical violence against RINDE, sodomizing him and  
23 forcing RINDE to orally copulate LEWIS. LEWIS then took a wire coat hanger and forced it  
24 into RINDE's urethra causing him to hemorrhage and causing chronic and irreparable injury  
25 to his penis and urogenital system. These were acts of childhood sexual abuse, which acts  
26

AMENDED COMPLAINT - 4 of 10  
(2:06-CV-00556TSZ)  
[Amended Complaint.doc]

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1 were also violations of chapter 9A.44 RCW or RCW 9.68A.040 or prior laws of similar effect  
2 at the time the acts were committed.

3 4.10 In approximately 1984 or 1985, RINDE disclosed the abuse and his mother  
4 reported it to the civil and church authorities. A criminal investigation of LEWIS ensued.  
5 Church officials described herein above shielded LEWIS from the law. The same church  
6 officials urged RINDE, then age fourteen (14), to not cooperate with the law enforcement  
7 investigation of LEWIS thereby allowing LEWIS to evade criminal prosecution and to move  
8 to another state where he eventually sexually molested more children. These church officials  
9 told him that he would not be believed, that it would be "his word" against LEWIS, that his  
10 allegations would hurt the image and reputation of the Mormon Church, that RINDE would  
11 be ridiculed and derided by church members in addition to other comments calculated to  
12 intimidate RINDE from cooperating with the civil authorities investigating LEWIS.

13 4.11 Church leaders told RINDE that the church would "take care of things," that  
14 they would help him with therapy and that they would help his family financially.

15 4.12 An abuse victim advocate in the King County Prosecutor's office arranged a  
16 meeting with RINDE at her office. Before she could meet privately with RINDE, Mormon  
17 Church leaders interfered in the investigative process. The three adult male Church officials  
18 went to RINDE'S home and told him that they would take him to the meeting at the  
19 prosecutor's office downtown. On the ride downtown in the car the three adult Mormon  
20 church officials pressured RINDE not to cooperate with law enforcement officials.

21 4.13 At the meeting, the church official that was a licensed Washington attorney  
22 told the victim's advocate that he was RINDE'S attorney which was untrue. The church  
23 official/lawyer told the victim advocate he would not permit her to interview RINDE in  
24 private.  
25  
26  
28

AMENDED COMPLAINT - 5 of 10  
(2:06-CV-00556-TSZ)  
[Amended Complaint.doc]

LAW OFFICES  
GORDON, THOMAS, HONEYWELL, MALANCA,  
PETERSON & DAHEIM LLP  
ONE UNION SQUARE  
600 UNIVERSITY, SUITE 2100  
SEATTLE, WASHINGTON 98101-4185  
(206) 476-7000 • FACSIMILE (206) 878-7575

1 4.14 RINDE succumbed to the Church's pressure not to cooperate. As a result,  
2 charges against LEWIS were not filed. Soon thereafter LEWIS moved to another state and  
3 joined a another ward of the Mormon Church.

4 **V. FIRST CAUSE OF ACTION**  
5 **(Negligence based on Common Law and breach of Fiduciary Duty)**

6 5.1 Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under  
7 this count and further alleges:

8 5.2 Defendants COP and the Mormon Church each had a common law duty to  
9 plaintiff to protect him from the criminal acts of LEWIS.

10 5.3 Defendants COP and the Mormon Church each breached their duty to protect  
11 plaintiff and plaintiff was damaged thereby.

12 5.4 Defendants COP and the Mormon Church had a "special relationship" with  
13 plaintiff and with LEWIS. They knew or should have known that LEWIS was a sadistic serial  
14 pedophile that was actively abusing children, COP and the Mormon Church each had a duty  
15 to use reasonable care in the hiring, supervision or retention of LEWIS as scoutmaster and  
16 also had a duty to warn or protect foreseeable victims including plaintiff. LEWIS' positions  
17 within the defendants' church were causally connected to and served to enable LEWIS to gain  
18 access to and abuse plaintiff.

19 5.5 The Mormon Church's bishops, stake presidents and Boy Scout leaders within  
20 the State of Washington breached both a duty of reasonable care in hiring, supervising or  
21 retaining LEWIS as scoutmaster and by failing to warn or protect children and/or by failing to  
22 report their knowledge of LEWIS's sexual abuse of children to civil authorities.

23 5.6 But for the breach of duty, acts, omissions and intentional misconduct of COP  
24 and the Mormon Church, church bishops, boy scout leaders, stake presidents and area  
25 presidents, LEWIS would not have been able to abuse plaintiff.

26  
AMENDED COMPLAINT - 6 of 10  
(2:06-CV-00556TSZ)  
[Amended Complaint.doc]

LAW OFFICES  
GORDON, THOMAS, HONEYWELL, MALANCA,  
PETERSON & DAHEIM LLP  
ONE UNION SQUARE  
800 UNIVERSITY, SUITE 2100  
SEATTLE, WASHINGTON 98101-4185  
(206) 470-7500 • FACSIMILE (206) 478-7575

1 5.7 COP's failure to adhere to its previously adopted guidelines for handling  
 2 victims of child sexual abuse and sex offenders caused harm to the plaintiff. The harm  
 3 plaintiff suffered as a result of defendants' negligence was the harm contemplated in COP's  
 4 Handbook of Instruction to its clergy.

5 5.8 Notwithstanding Defendants' duties, defendant failed to train and supervise its  
 6 hierarchal clergy in the proper implementation of its guidelines, policies and procedures  
 7 regarding the treatment of victims of child sexual abuse, to monitor and insure compliance  
 8 with their guidelines, policies and procedures, treatment of child sexual abusers and reporting  
 9 of child sexual abuse.

10 5.9 Defendants knew, or in the exercise of reasonable care should have known,  
 11 that their failure to report LEWIS to appropriate law enforcement or social services agencies  
 12 would result in LEWIS sexually abusing children including plaintiff, and in plaintiff failing to  
 13 obtain adequate treatment.

14 5.10 As a result of the molestation, breach of trust, and statutory violations, plaintiff  
 15 has suffered and will continue to suffer physical and emotional pain and dysfunction to his  
 16 general, non-economic damage in an amount to be determined. As a further result of the  
 17 sexual abuse, plaintiff incurred and/or will continue to incur costs for counseling and  
 18 psychological treatment, and has lost earning capacity to his damage in an amount to be  
 19 proved at trial.

20 **VI. SECOND CAUSE OF ACTION**  
 21 **(Intentional Infliction of Emotional Distress)**

22 6.1 Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under  
 23 this count and further allege:

24 6.2 Defendants knew, or in the exercise of reasonable care should have known,  
 25 that tampering with a witness was unlawful and that such conduct as pressuring victims not to  
 26

AMENDED COMPLAINT - 7 of 10  
 (2:06-CV-00556TSZ)  
 [Amended Complaint.doc]

LAW OFFICES  
 GORDON, THOMAS, HONEYWELL, MALANCA,  
 PETERSON & DAHEIM LLP  
 ONE UNION SQUARE  
 600 UNIVERSITY, SUITE 3100  
 SEATTLE, WASHINGTON 98101-4185  
 (206) 475-7600 • FACSIMILE (206) 475-7575



1 disclose, would be harmful to the best interests and psychological well-being of child victims  
2 of sexual abuse, including plaintiff.

3 6.3 Defendants knew or should have known that pressuring plaintiff not to  
4 cooperate with the civil authorities' investigation of LEWIS would greatly exacerbate  
5 plaintiff's physical, emotional and psychological injuries and, in fact, the defendants' conduct  
6 greatly exacerbated plaintiff's physical, emotional and psychological injuries.

7 6.4 Defendant knew that plaintiff had been subjected to horrific sexual abuse at the  
8 hands of its Scoutmaster and Melchisedek Priest PAUL LEWIS and knew that plaintiff had  
9 and would continue to suffer emotional, psychological and physical injuries and that unless he  
10 received appropriate assistance from civil authorities, that his injuries would be greatly  
11 exacerbated and much more difficult to treat with the passage of time.

12 6.5 The Church, being more concerned about shielding itself from scandal and  
13 potential civil liability and intent on protecting the public image of its all-male Mormon  
14 priesthood at the expense of aiding a gravely injured child that was plaintiff, pressured  
15 plaintiff in to not cooperating with the civil authorities with full knowledge of or with reckless  
16 disregard of the emotional and psychological injuries its conduct was certain to inflict.

17 6.6 Defendants' conduct was an outrageous violation of societal norms and went so  
18 far beyond all possible bounds of decency, so as to be regarded as atrocious, and utterly  
19 intolerable in a civilized community, and resulted in severe emotional distress.

20 6.7 As a further result of the defendants' intentional conduct, plaintiff has incurred  
21 and/or will continue to incur costs for counseling and psychological treatment, and has lost  
22 earning capacity to his damage in an amount to be proved at trial. As a result of the  
23 defendants' conduct, plaintiff has suffered and will continue to suffer physical and emotional  
24 pain and dysfunction to his general, non-economic damage in an amount to be proved at trial.  
25  
26

AMENDED COMPLAINT - 8 of 10  
(2:06-CV-00556TSZ)  
[Amended Complaint.doc]

LAW OFFICES  
GORDON, THOMAS, HONEYWELL, MALANCA,  
PETERSON & DAHEIM LLP  
ONE UNION SQUARE  
600 UNIVERSITY, SUITE 2100  
SEATTLE, WASHINGTON 98101-4105  
(206) 470-7300 • FACSIMILE (206) 470-7875



**VII. THIRD CAUSE OF ACTION  
(Estoppel and Fraudulent Concealment)**

7.1 Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further allege:

7.2 The Church defendants, and each of them, engaged in a plan of action to cover up incidents of the sexual abuse of minors by its Melchisedek priests and scout leaders and to prevent disclosure, prosecution and civil litigation including, but not limited to: failure to report incidents of abuse to law enforcement or child protection agencies, denial of abuse it had substantiated, the transfer of abusive Melchisedek priests and scoutmasters, coercion of victims and their families and by failure to seek out and redress the injuries these men had caused. Based on these actions, the defendants engaged in fraudulent concealment and are estopped from asserting defense of limitations.

**VIII. FOURTH CAUSE OF ACTION  
(Civil Conspiracy)**

8.1 Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further allege:

8.2 Defendants and others conspired to cover up incidents of sexual abuse of minors by its Mormon priests and scout leaders, including LEWIS and to prevent disclosure, prosecution and civil litigation including, but not limited to: failure to report incidents of abuse to law enforcement or child protection agencies, denial of abuse it had substantiated, aiding criminal child molesters in evading detection, arrest and prosecution, allowing them to cross state and international borders for purposes of gaining access to uninformed parents whose innocent children could be sexually abused, failure to warn, and by failure to seek out and redress the injuries its Melchisedek priests and scoutmasters had caused. Based on these actions, the defendants conspired for the unlawful purpose of concealing and suppressing information on the danger and threat that scoutmaster and priests like LEWIS posed to unsuspecting children, including the plaintiff.

AMENDED COMPLAINT - 9 of 10  
(2:06-CV-00556TSZ)  
[Amended Complaint.doc]

LAW OFFICES  
GORDON, THOMAS, HONEYWELL, MALANCA,  
PETERSON & DAHEIM LLP  
ONE UNION SQUARE  
200 UNIVERSITY BLVD 2100  
SEATTLE, WASHINGTON 98101-4183  
206 476 7500 - FACSIMILE 206 476 7575

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter a judgment against both defendants, jointly and severally, and in plaintiff's behalf, for the following:

1. For special damages for medical treatment expenses, lost earnings, and lost earnings capacity, and the expenses of medication and other special expenses, both in the past and continuing into the future, in amounts to be determined at the time of trial;

2. For all general damages, for physical, mental and emotional injury and disturbance, and other disorders resulting from the acts complained of herein;

3. For attorney's fees, prejudgment interest, costs and exemplary damages allowed by RCW 9.68A.130 and other law; and

4. For such other and further relief as this Court determines just in the premises.

Dated this \_\_\_\_ day of May, 2006.

GORDON, THOMAS, HONEYWELL,  
MALANCA, PETERSON & DAHEIM LLP

By: \_\_\_\_\_

Michael T. Pfau, WSBA No. 24649

[mpfau@gth-law.com](mailto:mpfau@gth-law.com)

Michelle A. Menely, WSBA No. 28353

[mmenely@gth-law.com](mailto:mmenely@gth-law.com)

Co-Counsel for Plaintiff

LAW OFFICES OF TIMOTHY D. KOSNOFF

By:  \_\_\_\_\_

Timothy D. Kosnoff, WSBA No. 16586

[timkosnoff@comcast.net](mailto:timkosnoff@comcast.net)

Co-Counsel for Plaintiff

AMENDED COMPLAINT - 10 of 10

(2:06-CV-00556TSZ)

[Amended Complaint.doc]

LAW OFFICES  
GORDON, THOMAS, HONEYWELL, MALANCA,  
PETERSON & DAHEIM LLP  
ONE UNION SQUARE  
600 UNIVERSITY, SUITE 2100  
SEATTLE, WASHINGTON 98101-4185  
(206) 670-7000 • FACSIMILE (206) 670-7575



King County  
Department of Judicial Administration  
Barbara Miner, Director and  
Superior Court Clerk  
(206) 296-9300 (206) 296-0100 TTY/TDD

8/14/2006

FILED

06 AUG 14 PM 2:05

KING COUNTY  
SUPERIOR COURT CLERK  
KENT, WA

ENT'D

ORIGINAL

KOSNOFF, TIMOTHY DAVID  
600 UNIVERSITY ST STE 2100  
SEATTLE, WA 98101-4161

GORDON, CHARLES COOPER  
1001 4<sup>TH</sup> AVE STE 4000  
SEATTLE, WA 98154-1007

TILDEN, JEFFREY IVER  
1001 4<sup>TH</sup> AVE STE 4000  
SEATTLE, WA 98154-1007

RE: RINDE FKA vs CORP OF THE PRES OF THE CHURCH OF LATTER DAY SAINTS AKA  
King County Superior Court No. 06-2-09825-1 SEA

Dear Counsel:

On 03-22-2006, a case was filed with King County Superior Court and an Order Setting an Original Trial date of 09-04-2007 was issued. This matter was disposed on 04-19-2006 by a filing of Notice of Filing Petition for Removal to U.S. District Court. On 08-11-2006, we received notification that this matter has been returned to our jurisdiction.

☐ This is to advise you that the case has been reinstated. Because the trial date has passed, you need to motion the Chief Civil Judge to issue a trial date and an amended schedule.

☐ This matter is assigned to Judge . Because the trial date has passed, you need to motion your assigned judge for a new trial date and an amended schedule.

XX - This is to advise you that the case has been reinstated and the trial date is 09-04-2007. This matter is assigned to Judge William L. Downing, Dept. 43, Tel. No. 296-9362.

Please notify all interested parties of the reinstatement of the case.

Sincerely,

Brenda Belcher, Deputy Clerk

Seattle:  
516 Third Avenue Room E609  
Seattle, WA 98104-2386

Regional Justice Center:  
401 Fourth Avenue North Room 2C  
Kent, WA 98032-4429

Juvenile:  
1211 East Alder Room 307  
Seattle, WA 98122-5598

FILED

2006 AUG 23 PM 4: 37

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

The Honorable William L. Downing

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

ROB RINDE f/k/a ROBERT LARRY LEROY  
PITSOR, JR.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS, a Utah corporation  
sole, aka the "MORMON CHURCH" THE  
CHURCH OF JESUS CHRIST OF LATTER-  
DAY SAINTS, an unincorporated association,

Defendant.

NO. 06-2-09825-1 SEA

SUBPOENA DUCES TECUM  
DIRECTED TO THE CUSTODIAN  
OF RECORDS FOR CHILD  
PROTECTIVE SERVICES,  
SPOKANE

TO: Records Custodian, Child Protective Services  
Spokane DCFS : MS B32-21  
1313 N. Atlantic St., Ste 2000  
Spokane, WA 99201-2318

YOU ARE HEREBY COMMANDED to appear at the offices of Spokane DCFS, 1313  
N. Atlantic St., Ste 2000, Spokane, WA 99201-2318, on Thursday, September 14, at 9:00 a.m.,  
or at some otherwise mutually agreed upon place and time, to testify at the taking of a deposition  
in the above case.

SUBPOENA DUCES TECUM, DCFS SPOKANE - 1

GORDON MURRAY TILDEN LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154-1007  
Phone (206) 467-6477  
Fax (206) 467-6292

1 You are further commanded to bring with you and produce at that time the following  
2 documents:  
3

4  
5 1. Any and all records in your possession relating to Robert Paul Rinde aka Robert  
6 Larry Leroy Pitsor, (date of birth: 12/8/69) believed to have filed a complaint of minor sexual  
7 abuse against Paul Lewis in the 1983-1985 time frame. Mr. Rinde/Pitsor's mother is Anne  
8 Mitchell Rinde aka Joyce Ann Pitsor.  
9  
10

11  
12  
13 2. Any and all records in your possession relating to any complaints against Paul  
14 Lewis (date of birth: 8/29/45).  
15

16  
17 3. Any and all records in your possession relating to any complaints against  
18 Robert Paul Rinde aka Robert Larry Leroy Pitsor.  
19

20  
21 COUNSEL FOR DEFENDANT WILL WAIVE APPEARANCE IF COPIES OF THE  
22 RECORDS ARE RECEIVED IN ADVANCE OF THE DATE SET OUT ABOVE.  
23

24  
25 HOW TO COMPLY WITH THE SUBPOENA:  
26

27 If you have not received a Protective Order barring release of these records, you may  
28 comply with this subpoena by providing complete and legible copies of the documents requested  
29 above no later than September 7, 2006, to the undersigned attorneys.  
30

31  
32 If you follow such procedure, then please sign and return the attached Declaration of  
33 Records Custodian along with the records.  
34

35  
36 FAILURE TO OBEY THIS SUBPOENA MAY BE DEEMED A CONTEMPT OF THE  
37 COURT.  
38

39 For your information, counsel for Robert Paul Rinde are:  
40

41  
42  
43  
44  
45  
46 SUBPOENA DUCES TECUM, DCFS SPOKANE - 2

GORDON MURRAY TILDEN LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154-1007  
Phone (206) 467-6477  
Fax (206) 467-6292

1 Michael T. Pfau  
2 Michelle A. Menely  
3 Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP  
4 600 University, Suite 2100  
5 Seattle, WA 98101-4185  
6 Telephone: (206) 676-7500  
7

8 Timothy D. Kosnoff  
9 Law Offices of Timothy D. Kosnoff  
10 One Union Square  
11 600 University Street, Suite 2101  
12 Seattle, WA 98101  
13 Telephone: (206) 676-7610  
14

15  
16 DATED this 23rd day of August, 2006.  
17

18  
19 GORDON MURRAY TILDEN LLP  
20

21  
22 By   
23

24 Charles C. Gordon, WSBA #1773

25 Jeffrey I. Tilden, WSBA #12219

26 Attorneys for Defendant The Corporation of the  
27 President of the Church of Jesus Christ of Latter-Day  
28 Saints  
29  
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SUBPOENA DUCES TECUM, DCFS SPOKANE - 3

GORDON MURRAY TILDEN LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154-1007  
Phone (206) 467-6477  
Fax (206) 467-6292

DECLARATION OF CUSTODIAN OF RECORDS

Re: Robert Paul Rinde

I, \_\_\_\_\_, being the duly authorized Custodian of Records  
at:

Facility: Child Protective Services  
Spokane DCFS : MS B32-21  
Washington State Dept. of Social and Health Services  
Address: 1313 N. Atlantic St., Ste 2000  
City: Spokane, WA 99201-2318

do declare:

- ( ) That as of the date of this declaration, I have supplied a true copy of all records requested by Defendant The Corporation of the President of the Church of Jesus Christ of Latter-Day Saints related to the above-mentioned matter, which were kept and maintained by this facility in the usual course of business.
- ( ) That as of the date of this declaration, no records requested by Defendant The Corporation of the President of the Church of Jesus Christ of Latter-Day Saints related to the above-mentioned matter are in the possession of this facility.

Pursuant to RCW 9A.72.085, I hereby certify and declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2006, at \_\_\_\_\_,  
Washington.

Custodian Signature: \_\_\_\_\_

[Subpoena Duces Tecum--WA DCFS, Spokane]

SUBPOENA DUCES TECUM, DCFS SPOKANE - 4

GORDON MURRAY TILDEN LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154-1007  
Phone (206) 467-6477  
Fax (206) 467-6292

DECLARATION OF SERVICE

The undersigned hereby certifies that on the date indicated below, true and correct copies of the foregoing document were served at the following addresses via the methods indicated:

Records Custodian, Child Protective Services  
Spokane DCFS : MS B32-21  
1313 N. Atlantic St., Ste 2000  
Spokane, WA 99201-2318  
(X) Certified Mail ( ) Hand Delivery ( ) Via e-mail

Michael T. Pfau  
Michelle A. Menely  
Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP  
600 University, Suite 2100  
Seattle, WA 98101-4185  
(X) First Class Mail ( ) Hand Delivery ( ) Via e-mail

Timothy D. Kosnoff  
Law Offices of Timothy D. Kosnoff  
600 University Street, Suite 2101  
Seattle, WA 98101  
(X) First Class Mail ( ) Hand Delivery ( ) Via e-mail

King County Superior Court  
516 Third Avenue  
Seattle, WA 98101  
( ) First Class Mail (X) Hand Delivery ( ) Via e-mail

Washington State Attorney General's Office  
1116 W Riverside Ave  
Spokane, WA 99201-1194  
(X) First Class Mail ( ) Hand Delivery ( ) Via e-mail

DATED this 23rd day of August 2006.

  
John K. Ili

SUBPOENA DUCES TECUM, DCFS SPOKANE - 5

GORDON MURRAY TILDEN LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154-1007  
Phone (206) 467-6477  
Fax (206) 467-6292



FILED

2006 AUG 25 PM 3:23

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WASUPERIOR COURT, IN AND FOR THE COUNTY OF KING, STATE OF  
WASHINGTONROB RINDE f/k/a ROBERT LARRY LEROY  
PITSOR, JR.

Plaintiff/Petitioner

Cause #: 06-2-09825-1SEA

vs.

THE CORPORATION OF THE PRESIDENT OF THE  
CHURCH OF JESUS CHRIST OF LATTER-DAY  
SAINTS, A UTAH CORPORATION SOLE, aka THE  
MORMON CHURCH THE CHURCH OF JESUS  
CHRIST OF LATTER-DAY SAINTS, AN  
UNINCORPORATED ASSOCIATION

Defendant/Respondent

Declaration of Service of:

SUBPOENA DUCES TECUM; WITNESS FEE CHECK

Hearing Date: Sep 14 2006

## Declaration:

The undersigned hereby declares: That s(he) is now and at all times herein mentioned, a citizen of the United States and a resident of the State of Washington, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

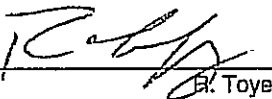
On the date and time of Aug 23 2006 2:35PM at the address of 1115 WASHINGTON ST SE OLYMPIA, within the County of THURSTON, State of WASHINGTON, the declarant duly served the above described documents upon RECORDS CUSTODIAN, STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES by then and there personally delivering 0 true and correct copy(ies) thereof, by then presenting to and leaving the same with DICK SYPPER ADM. SEC. IN CHILDREN'S ADMINISTRATION HQ SECTION.

No information was provided that indicates that the subjects served are members of the U.S. military.

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: August 24, 2006 at Olympia, WA

by



R. Toye

Service Fee Total: \$ 62.10



FILED

2006 AUG 29 PM 2:36

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

ROB RINDE f/k/a ROBERT LARRY  
LEROY PITSOR, JR.,

Plaintiff,

v.

THE CORPORATION OF THE  
PRESIDENT OF THE CHURCH OF  
JESUS CHRIST OF LATTER-DAY  
SAINTS, a Utah corporation sole, aka the  
"MORMON CHURCH" THE CHURCH  
OF JESUS CHRIST OF LATTER-DAY  
SAINTS, an unincorporated association,

Defendant.

Cause No. 06-2-09825-1 SEA

OBJECTION TO SUBPOENA DUCES  
TECUM

COMES NOW the Department of Social and Health Services, by and through its attorneys, Rob McKenna, Attorney General and Hilery M. Kirchmeier, Assistant Attorney General, and objects pursuant to the provisions of CR 45(d)(1) to the subpoena duces tecum dated August 21, 2006 directed to Records Custodian, State of Washington Department of Social and Health Services, 1115 Washington St. SE, Olympia, WA 98504, and issued by Charles C. Gordon and Jeffrey I. Tilden attorneys for The Corporation of the President of the Church of Jesus Christ of Latter-Day Saints, for the inspection and production of child

OBJECTION TO SUBPOENA DUCES TECUM  
Rev. 04/01 pp

1

ATTORNEY GENERAL OF WASHINGTON  
900 Fourth Avenue, Suite 2000  
Seattle, WA 98164  
(206) 464-7744

ORIGINAL

1 protective services records relating to Anne Mitchell Rinde aka Joyce Ann Pitsor and Robert  
2 Paul Rinde aka Robert Larry Leroy Pitsor.

3 This objection to the subpoena duces tecum is based on the following grounds:

4 1. Pursuant to the Child Abuse Prevention and Treatment Act and specifically  
5 42 USC § 5106a(b) states are required to provide methods to preserve the confidentiality of  
6 all records in order to protect the rights of the child and the child's parents.

7 2. Pursuant to 45 CFR § 1340.20 states are required to "hold all information  
8 related to personal facts or circumstances about individuals" involved in child abuse  
9 programs or projects as confidential. Further, 45 CFR § 1340.14(i)(I) states the  
10 unauthorized disclosure of child protective services records is a criminal offense.

11 3. Under Title 74 "Public Assistance," RCW 74.04.060 provides for the  
12 confidentiality of DSHS records in general including CPS records and public assistance  
13 records. RCW 74.04.060 requires the confidentiality of DSHS records and states that "for  
14 the protection of applicants and recipients, the department ... (is) prohibited except as  
15 hereinafter provided from disclosing the contents of any records ... except for purposes  
16 directly connected with the administration of the programs of this title". RCW 74.04.060  
17 further states that in any judicial proceeding, except those directly concerned with the  
18 administration of these programs, such records .... and their contents, shall be deemed  
19 privileged communications". In this case the records are being sought in a civil proceeding  
20 which is not directly connected with any program under Title 74.

21 4. Mr. Rinde and Mr. Pitsor are considered by the Department to be applicants  
22 and recipients of services provided pursuant to Title 74 and thus under RCW 74.04.060  
23 these CPS records are privileged.

24 5. DSHS records are confidential and privileged under RCW 13.50 and can  
25 only be released as provided by that statute. RCW 13.50.100.

26 OBJECTION TO SUBPOENA DUCES TECUM  
Rev. 04/01 pp

2

ATTORNEY GENERAL OF WASHINGTON  
900 Fourth Avenue, Suite 2000  
Seattle, WA 98164  
(206) 464-7744

1 This objection has been filed pursuant to Civil Rule 45(d)(1) and any notices of  
2 hearing or motions regarding this subpoena duces tecum are to be sent directly to counsel  
3 designated below at the following address:

4 Office of the Attorney General  
5 900 Fourth Avenue Suite 2000  
6 Seattle, WA 98164  
(206) 464-7045

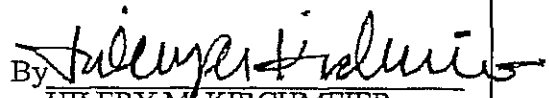
7 All scheduling of hearings with proper notice are to be coordinated through the  
8 undersigned Assistant Attorney General for the Department of Social and Health Services at  
9 the above-stated address and telephone number.

10 On the basis of the foregoing, the Department of Social and Health Services objects  
11 to the improper subpoena duces tecum issued by attorneys for The Corporation of the  
12 President of the Church of Jesus Christ of Latter-Day Saints.

13 DATED this 28<sup>th</sup> day of August, 2006.

14 Presented by:

15 ROB MCKENNA  
16 Attorney General

17 By   
18 HILERY M. KIRCHMEIER  
19 Assistant Attorney General  
20 WSBA #30729  
21  
22  
23  
24  
25

FILED

2006 AUG 29 PM 2:36

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

ROB RINDE f/k/a ROBERT LARRY  
LEROY PITSOR, JR.,

Plaintiff,

v.

THE CORPORATION OF THE  
PRESIDENT OF THE CHURCH OF  
JESUS CHRIST OF LATTER-DAY  
SAINTS, a Utah corporation sole, aka the  
"MORMON CHURCH" THE CHURCH  
OF JESUS CHRIST OF LATTER-DAY  
SAINTS, an unincorporated association,

Defendant.

Cause No. 06-2-09825-1 SEA

OBJECTION TO SUBPOENA DUCES  
TECUM

COMES NOW the Department of Social and Health Services, by and through its attorneys, Rob McKenna, Attorney General and Hilery M. Kirchmeier, Assistant Attorney General, and objects pursuant to the provisions of CR 45(d)(1) to the subpoena duces tecum dated August 21, 2006 directed to Records Custodian, King East Office, State of Washington Department of Social and Health Services, 805 -156<sup>th</sup> Ave NE, Bellevue, WA 98007, and issued by Charles C. Gordon and Jeffrey I. Tilden attorneys for The Corporation of the President of the Church of Jesus Christ of Latter-Day Saints, for the inspection and

OBJECTION TO SUBPOENA DUCES TECUM  
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ORIGINAL

1 production of child protective services records relating to Anne Mitchell Rinde aka Joyce  
2 Ann Pitsor and Robert Paul Rinde aka Robert Larry Leroy Pitsor.

3 This objection to the subpoena duces tecum is based on the following grounds:

4 1. Pursuant to the Child Abuse Prevention and Treatment Act and specifically  
5 42 USC § 5106a(b) states are required to provide methods to preserve the confidentiality of  
6 all records in order to protect the rights of the child and the child's parents.

7 2. Pursuant to 45 CFR § 1340.20 states are required to "hold all information  
8 related to personal facts or circumstances about individuals" involved in child abuse  
9 programs or projects as confidential. Further, 45 CFR § 1340.14(i)(I) states the  
10 unauthorized disclosure of child protective services records is a criminal offense.

11 3. Under Title 74 "Public Assistance," RCW 74.04.060 provides for the  
12 confidentiality of DSHS records in general including CPS records and public assistance  
13 records. RCW 74.04.060 requires the confidentiality of DSHS records and states that "for  
14 the protection of applicants and recipients, the department ... (is) prohibited except as  
15 hereinafter provided from disclosing the contents of any records ... except for purposes  
16 directly connected with the administration of the programs of this title". RCW 74.04.060  
17 further states that in any judicial proceeding, except those directly concerned with the  
18 administration of these programs, such records .... and their contents, shall be deemed  
19 privileged communications". In this case the records are being sought in a civil proceeding  
20 which is not directly connected with any program under Title 74.

21 4. Mr. Rinde and Mr. Pitsor are considered by the Department to be applicants  
22 and recipients of services provided pursuant to Title 74 and thus under RCW 74.04.060  
23 these CPS records are privileged.

24 5. DSHS records are confidential and privileged under RCW 13.50 and can  
25 only be released as provided by that statute. RCW 13.50.100.

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